

**REMARKS/ARGUMENTS**

Claims 45-82 are pending in the present application. The Examiner is thanked for the kind allowance of claims 45-77. Claims 78-82 stand rejected. Claim 78 has been amended to further clarify the present invention and is supported in the specification and figures. No new matter has been added.

**Claim Rejection – 35 U.S.C. §102(b)**

Claims 78-82 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Kensey et al. (U.S. Patent 5,676,689). This rejection is respectfully traversed.

The Office action states:

“Kensey et al. teach[s] a fluid handling tube. In fact Kensey et al. teach[s] two fluid handling tubes. The first tube is a positioning device 400 (figure 28, for example) which is considered a “fluid handling tube” where it includes a tube structure with a lumen 402, a proximal enlarged portion (at the end including character number 406) and a distal area or tip (at the end including character number 404). This tube structure includes a fluid port 404 near the distal end and a fluid port 406 at the proximal end. As such, it anticipates the above noted claims. Kensey et al. further includes a second tube 28. It is considered a “fluid handling tube” since it includes tube structure. Specifically, a lumen (which allows the positioning device 400 to slip therethrough), and a distal port (at 28c), and a proximal port with an enlarged portion (at 28E, 28D). The tube 28 of Kensey et al. include a distal port near the end 506 (figure 33) and a proximal port at 28E for the movement of fluids within the tube. As such, it anticipates the above noted claims.”

Applicant respectfully disagrees for the reasons, among others, stated below.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102 (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup>

Amended Claim 78 provides for:

“A fluid handling tube, comprising:  
a proximal end and a distal end;  
a lumen extending between said proximal end and said distal end,  
said lumen defined by a sidewall; and,  
a plurality of fluid ports formed on said sidewall near said  
proximal end for fluids to exit out of said lumen.”

Claim 78 provides for “a lumen extending between said proximal end and said distal end, said lumen defined by a sidewall; and a plurality of fluid ports fluid ports near said proximal end.” This is further supported in the Specification which states that the “tube 300 includes a cylindrical sidewall 302 extending between a proximal end 306 and a distal end 304. ... At least one, and preferably numerous fluid ports 312 are formed through the sidewall 302 adjacent to the proximal end 306.” (Specification, page 30, lines 7-12).

Kensey et al. teaches the use of one “port 304 [which] forms a window into which blood in the artery may flow.” Kensey et al. does not teach having “a plurality of fluid ports formed on said sidewall near said proximal end” as claimed in Claim 78.

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<sup>1</sup> Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Accordingly, since each and every element as set forth in Claim 78 is not found in Kensey, it can not be said to anticipate the claimed invention. Thus, it is respectfully requested that this rejection be withdrawn.

**Claim Rejection – 35 U.S.C. §102(b)**

Claims 78-81 stand rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Barnwell (U.S. Patent 5,462,194). This rejection is respectfully traversed.

The office action states:

“Barnwell teaches a tube portion 9 having a proximal end 23 with an enlarged portion (figure 4, for example) and a distal end with a fluid port near such end. A lumen 21 is provided along the tube 9 for accommodating a control head 13. The control head controls the stopping and starting of the flow of fluid from the reservoir to the control head, and then to the fluid handling tube.”

As stated above, Claim 78 provides for “a lumen extending between said proximal end and said distal end, said lumen defined by a sidewall; and a plurality of fluid ports fluid ports near said proximal end.” This is further supported in the Specification which states that the “tube 300 includes a cylindrical sidewall 302 extending between a proximal end 306 and a distal end 304. ... At least one, and preferably numerous fluid ports 312 are formed through the sidewall 302 adjacent to the proximal end 306.” (Specification, page 30, lines 7-12).

Barnwell merely teaches a self-ventilating and self sealing straw for a drinking container. (Abstract). Barnwell does not teach having "a plurality of fluid ports formed on said sidewall near said proximal end" as claimed in Claim 78.

Accordingly, since each and every element as set forth in Claim 78 is not found in Barnwell, it can not be said to anticipate the claimed invention. Thus, it is respectfully requested that this rejection be withdrawn.

#### **Remaining Dependent Claims**

The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

In view of the foregoing, among others, it is respectfully asserted that the claims are now in condition for allowance.

#### **Request for Allowance**

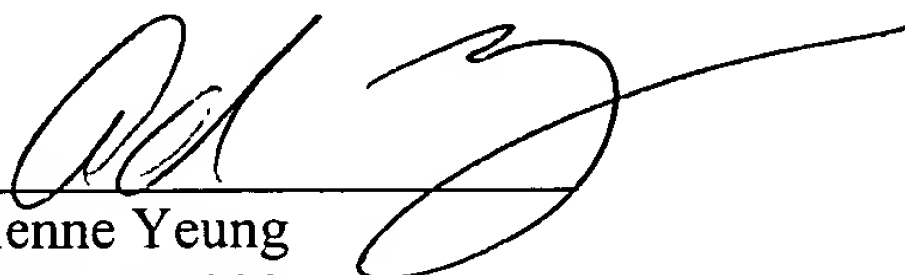
It is believed that this Response places the above-identified patent application into condition for allowance. Early favorable consideration of this application is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

The Commissioner is hereby authorized to charge any additional fees or credit  
any overpayment to Deposit Account No. 50-1698.

Respectfully submitted,  
THELEN REID & PRIEST, LLP

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